

**BEFORE THE
COMMISSION ON LANDLORD TENANT AFFAIRS
FOR MONTGOMERY COUNTY, MARYLAND**

In the matter of:

Sonya Christy and
Teresa Rainey

Complainants

V.

Ramon Gonzalez, Cynthia Gonzalez, and
Andrea Fuentes

Respondents

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Case No. 32291

Rental Facility: 8205 Greenwood Avenue, Apt. 2, Takoma Park, MD 20912 (License # 17500)

DECISION AND ORDER

The above captioned case having come before the Commission on Landlord-Tenant Affairs for Montgomery County, Maryland ("Commission"), pursuant to Sections 29-10, 29-14, 29-41, and 29-44 of the Montgomery County Code, 2001, as amended, and the Commission having considered the testimony and evidence of record, it is therefore, this 24th day of May, 2011, found, determined, and ordered, as follows:

BACKGROUND

On January 25, 2011, Sonya Christy and Teresa Rainey, ("Complainants"), former tenants at 8205 Greenwood Avenue, Apt. 2, Takoma Park, MD ("Apartment"), a licensed rental property in Montgomery County, Maryland, filed a complaint with the Office of Landlord-Tenant Affairs within the Department of Housing and Community Affairs, ("Department") in which they alleged that their former landlords, Ramon Gonzalez, Cynthia Gonzalez and Andrea Fuentes, owners of the Apartment ("Respondents"): (1) failed to refund any portion of their \$2,000.00 security deposit plus accrued interest within 45 days after the termination of their tenancy, in violation of Maryland Code (1954, 2003 Repl. Vol., 2007 Suppl.), Real Property Article, Section 8-203(e)(1) ("Real Property Article"); and, (2) failed to send them an itemized list of damages, together with a statement of the costs actually incurred to repair those damages, within the 45 days after the termination of their tenancy, in violation of Section 8-203 (g)(1) of the Real Property Article, and therefore, pursuant to Section 8-203(g)(2), the Respondents have forfeited the right to withhold any portion of their security deposit plus accrued interest for damages.

The Complainants assert that they did not damage the Apartment in excess of ordinary wear and tear during their tenancy, and therefore, the Respondents had no reasonable basis to withhold any portion of their security deposit plus accrued interest.

The Respondents contend that the Complainants damaged the Apartment in excess of ordinary wear and tear during their tenancy, and the costs they incurred to repair the damages exceeded the amount of the security deposit the Complainants paid.

The Complainants are seeking an Order from the Commission for the Respondents to refund their entire \$2,000.00 security deposit plus interest, and a penalty of up to three times that amount based on the Respondents' unreasonable withholding of their entire security deposit plus interest.

After determining that the complaint was not susceptible to conciliation, the Department referred this case to the Commission for its review, and on April 5, 2011, the Commission voted to hold a public hearing on May 11, 2011. The public hearing in the matter of Sonya Christy and Teresa Rainey v. Ramon Gonzalez, Cynthia Gonzalez and Andrea Fuentes, relative to Case No. 32291, was held on May 11, 2011.

The record reflects that the Complainants and the Respondents were given proper notice of the hearing date and time. Present and sworn at the hearing and presenting evidence were the Complainants, Sonya Christy and Teresa Rainey, Respondent Andrea Fuentes, Michael Rosado, Attorney for the Respondents; and, Eduardo Valdez, Contractor, witness for the Respondents.

Without objection, the Commission entered into the record the case file compiled by the Department, identified as Commission's Exhibit No. 1. The Commission also entered into evidence the following exhibits offered by the Complainants: (1) copy of a series of e-mails sent to the Respondents, relative to requested repairs in the Apartment, identified as Complainants' Exhibit No.1; (2) copy of text message communications between the parties, identified as Complainants' Exhibit 2; (3) copy of a letter dated November 6, 2010, sent by the Complainants to the Respondents' attorney, identified as Complainants' Exhibit 3; (4) ACE Hardware store receipt dated August 9, 2010, for purchase of paint, identified as Complainants' Exhibit 4; and, (5) copy of a letter dated August 10, 2010, sent to the Complainants by the Respondents' attorney, identified as Complainants' Exhibit 5.

The Commission decided to keep the record open for one week, until May 18, 2011, so the Respondents could submit copy of receipts relative to the renovation that took place in the Apartment before the Complainants moved in. The documentation was received as a 9 page fax on May 17, 2011, and forwarded to the Complainants and the Commissioners. Such documentation was identified as Respondent's Exhibit No. 1, and entered in the record with the Complainants' objection to pages 5, 6 and 9. The record was closed May 18, 2011.

FINDINGS OF FACT

Based on the testimony and evidence of record, the Commission makes the following Findings of Fact:

1. On March 14, 2010, Respondent Andrea Fuentes and the Complainants signed a one year lease agreement ("Lease") for the rental of the Apartment, which commenced on March 15, 2010, and expired on March 31, 2011, for a monthly rent of \$1,700.00.

2. On or about March 14, 2010, the Complainants paid the Respondent a security deposit, in the amount of \$2,000.00 (\$1,700.00 plus \$300.00 pet deposit); which amount is receipted in the Lease.

3. The Commission finds that the Lease does not contain any of the disclosures required by Section 8-203, "Security Deposits", or Section 8-203.1, "Security Deposit Receipt", of the Real Property Article..

4. Via a Consent Agreement, on October 7, 2010, the parties agreed to a termination of the Lease by November 30, 2010.

5. The Commission finds credible the Complainants' testimony that on November 6, 2010, they advised the Respondents' attorney of their forwarding address – P. O. Box 11192, Takoma Park, MD 20913 (Complainants' Exhibit 3).

6. On November 30, 2010, the Complainants vacated the Apartment having paid rent in full through that date.

7. The Commission finds credible the Complainants' testimony that on December 4, 2010, a joint final walkthrough of the Apartment took place with Respondent Andrea Fuentes, Complainant Teresa Rainey, and Mr. Rosado, attorney for the Respondents, at which time no damages in excess of ordinary wear and tear were noted.

8. The Commission finds credible the Respondent's testimony that there was evidence of damage at the Apartment after the Complainants vacated. However, the Respondent did not provide sufficient evidence/documentation that those damages were in excess of ordinary wear and tear.

9. The Commission finds credible the testimony of Eduardo Valdez, Contractor, that he performed work at the Apartment after the Complainants vacated. However, the contractor did not provide any probative testimony in support of the Respondent's position that the Complainants damaged the Apartment in excess of ordinary wear and tear.

10. The Commission finds that by correspondence postmarked January 15, 2011, (Page 58-Commission Exhibit 1) the Respondents' attorney mailed to the Complainants an itemized list of damages that did not reflect actual cost incurred to repair damages at the Apartment, it was just an estimate. This correspondence was returned to the sender because it contained the wrong delivery address.

11. The Commission finds that the same correspondence was re-mailed to the Complainants on January 19, 2011 (Page 59-Commission Exhibit 1).

12. The Commission finds that the Respondents failed to credit the Complainants' security deposit with the correct amount of simple interest which had accrued on their \$2,000.00 security deposit from the commencement of their tenancy, March 15, 2010, until the termination of their tenancy, November 30, 2010.

CONCLUSIONS OF LAW

Accordingly, based upon a fair consideration of the testimony and evidence contained in the record, the Commission on Landlord-Tenant Affairs concludes:

1. The Commission concludes that the Respondents failed to have the proper security deposit disclosures in the Lease in violation of Section 8-203.1 of the Real Property Article, therefore pursuant to Section 8-203 (f) (1) (vi) of the Real Property Article they have forfeited the right to withhold any portion of the Complainants' security deposit for damages.

2. The Commission concludes that the Respondents failed to send to the Complainants within 45 days after the termination of their tenancy a list of damages claimed against their security deposit along with actual cost incurred to repair those damages, which constitutes a violation of Section 8-203 (g) (1) of the Real Property Article, and therefore, pursuant to Section 8-203 (g) (2), the Respondents have forfeited their right to withhold any portion of the Complainants' security deposit for damages.

4. The Commission concludes that the Respondents' failure to pay the Complainants interest which had accrued on their security deposit constitutes a violation of Section 8-203 (e) (1) of the Real Property.

5. Although the Commission concludes that the failure by the Respondents to refund any portion of the Complainants' security deposit was unreasonable and constitutes a violation of Section 8-203 (e)(4) of the Real Property Article, to award a penalty, as requested by the Complainants, pursuant to Section 29-47(b)(3) of the County Code, the Commission must consider the egregiousness of the Landlord's conduct in wrongfully withholding all or part of the Complainant's security deposit, whether the Landlord acted in good faith, and any prior history of wrongful withholding of a security deposit. Based on the evidence, the Commission concludes that the Respondents' conduct did not rise to the level of bad faith or egregiousness necessary to award a penalty. Therefore, Complainants' request for such an award is denied.

ORDER

In view of the foregoing, the Commission on Landlord-Tenant Affairs hereby orders that the Respondents must pay the Complainants **\$2,030.00**, which sum represents the Complainants' security deposit (\$2,000.00), plus accrued interest (\$30.00).

Commissioner David Peller, Commissioner Galia Steinbach, and, Commissioner Katia G. Cervoni, Panel Chairperson, unanimously concurred in the foregoing decision.

To comply with this Order, Respondents, Ramon Gonzalez, Cynthia Gonzalez and Andrea Fuentes, must forward to the Office of Landlord-Tenant Affairs, 100 Maryland Avenue,

4th Floor, Rockville, MD 20850, within thirty (30) calendar days of the date of this Decision and Order, a check, made payable to Sonya Christy and Teresa Rainey, in the amount of \$2,030.00.

The Respondents, Ramon Gonzalez, Cynthia Gonzalez and Andrea Fuentes, are hereby notified that Section 29-48 of the County Code declares that failure to comply with this Decision and Order is punishable by a \$500.00 civil fine Class A violation as set forth in Section 1-19 of the County Code. This civil fine may, at the discretion of the Commission, be imposed on a daily basis until there is compliance with this Decision and Order.

In addition to the issuance of a Class A civil citation and \$500.00 civil fine, should the Commission determine that the Respondents have not, within thirty (30) calendar days of the date of this Decision and Order, made a bona fide effort to comply with the terms of this Decision and Order, it may also refer the matter to the Office of the County Attorney for additional legal enforcement.

Any party aggrieved by this action of the Commission may file an administrative appeal to the Circuit Court for Montgomery County, Maryland, within thirty (30) days from the date of this Decision and Order, pursuant to the Maryland Rules governing administrative appeals. Be advised that pursuant to Section 29-49 of the County Code, should the Respondents choose to appeal the Commission's Order, they must post a bond with the Circuit Court in the amount of the award (\$2,030.00) if a stay of enforcement of this Decision and Order is sought.

Katia G. Cervoni, Panel Chairperson
Commission on Landlord-Tenant Affairs